



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

CIVIL SUIT NO. 49 OF 2012

LAWRENCE KAMUNDI GICHUNGE.....PLAINTIFF

VERSUS

SAMUEL MUREGA M'NKUMBUKU.....DEFENDANT

RULING

This ruling concerns two related causes. The first one is a notice of Motion filed by the defendant and dated 20th September, 2014. It seeks the dismissal of the suit for want of prosecution and costs. It states that after a lapse of more than one year, the plaintiff had not set down the suit for hearing and the defendant ascribes this situation to a lack of willingness on the part of the plaintiff to prosecute the suit. One of the grounds proffered in support of the application opines that “no prejudice whatsoever or at all shall be occasioned on the Plaintiff upon dismissal of the suit”. Another ground rightly states that litigation must come to an end.

The other related cause concerns a notice to show cause why the suit herein should not be dismissed for want of prosecution in terms of Order 17 of the Civil Procedure Rules. The Notice to show cause was issued at the behest of this court.

Both matters were heard on 15/12/2014. Miss Kiome for the Plaintiff submitted that her client had shown cause via a replying affidavit dated 8/12/2014. In the affidavit she explained that after the suit was filed by Mr. Isaboke, the plaintiff's Advocate, no date could be obtained at the Registry as this court's Deputy Registrar had directed that only old matters could get hearing dates. The Plaintiff also said that later on, Mr. Isaboke left active practice and joined the Office of Director of Public Prosecutions as a State Counsel, now working in Lamu County. This left the Plaintiff in a lurch. Miss Kiome said that the Plaintiff was seriously desirous of prosecuting this suit.

Mr. Omari submitted that the Plaintiff's replying affidavit dated 8/12/2014 had not shown cause as to why the suit should not be dismissed as it only amounted to an ascription of blame upon the Plaintiff's former Advocate. He argued that he should have ensured that his advocate prosecuted the suit. He asked the court to dismiss the suit.

I agree with Mr. Omari that it is the Plaintiff's duty to gingerly and diligently pursue the process germane to the prosecution of his case. In my mind, there is no doubt that the way the Plaintiff has behaved in the prosecution of this suit evinces a veritable level of indolence and carelessness. This needed to be satisfactorily explained to the court.

It is in the public domain that the Deputy Registrar had directed the registry to list

for hearing only old cases. The notice that contained this directive was rather unfortunate as it rendered the implementation of the provisions of Order 17 of the Civil Procedure Rules difficult. It has given litigants a cause to fall back upon in matters which were filed at a particular time. It is my view that courts can not punish litigants when they are parties to situations which they had not authored and the litigants are innocent. In such cases litigants merit some benefit of doubt.

In the circumstances, I find that cause has been shown to the satisfaction of this court that this suit should not be dismissed . Costs will be in the cause.

The Plaintiff is directed to fully comply with Orders 3 and 11 of the Civil Procedure Rules within 30 days. The defendant is directed to fully comply with Orders 7 and 11 of the Civil Procedure Rules within 30 days after service upon him of the Plaintiff's compliance documents.

The Plaintiff is directed to have this suit listed for directions within 90 days of the date this ruling is delivered.

It is so ordered .

Delivered in Open Court at Meru this 18th day of June, 2015 in the presence of :

CC: Lilian /Daniel

Harun Gitonga for Plaintiff/Respondent

P.M. NJOROGÉ

JUDGE